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10/007,197	12/04/2001	James Ronald Lawter	ORA 100/102 CON	3814

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EXAMINER

WEBMAN, EDWARD J

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/007197

Applicant(s)

WEBMAN LAUTER

Examiner

WEBMAN

Group Art Unit

1617

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 2/26/03
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-11, 13, 14 is/are pending in the application.
- Of the above claim(s) 4, 9, 10, 14 is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 1-3, 5-8, 11, 13 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

Applicant Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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Applicant's election of Group I, claims 1-11, 13,14 and meclocycline in Paper No. 10 and mouthwash in an election by telephone on 6/3/03 (see accompanying interview summary) in response to the notice of nonresponsive amendment, paper #11, filed 5/29/03, is acknowledged. The traversal in paper #8, filed 12/03/02 is on the ground(s) that, regarding the restriction between Group I and Group II, Group II claims cannot be practiced with a materially different composition and, further, neither Group I nor Group II recite a particular disease. Regarding the restriction between Group I and Group III, applicants assert a tetracycline/interferon complex is materially different from the claimed composition. This is not found persuasive because applicants have cancelled the claims of Groups II and III in supplemental amendment, paper #10, filed 2/26/03, rendering applicants' traversal in paper #8 moot.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-8, 11,13 rejected under 35 U.S.C. 103(a) as being unpatentable over Pan et al in view of Armstrong et al and Henderson et al.

Pan et al teach a composition comprising tetracyclines (abstract). A mouthwash is disclosed (column 2 line 41). Meclocycline is specified (column 5 line 47).

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Armstrong et al teach a complex of chlortetracycline and calcium to achieve a clear stable solution (column 2 lines (29-30, 36).

Henderson et al teach that the tetracycline family chelates calcium ions (column 9, lines 49-63).

It would have been obvious to one of ordinary skill to complex the meclocycline with calcium in the mouthwash of Pan et al to achieve the beneficial effect of a clear and stable solution in view of the teaching of Armstrong et al of achieving such a solution with a calcium complex of a similar tetracycline, and the teaching of Henderson et al that the tetracycline family as a whole is known to chelate calcium.

No claims allowed.

Any inquiry concerning this communication should be directed to E. Webman at telephone number 703-308-4432.


EDWARD J. WEBMAN
PATENT EXAMINER
GROUP 1500